



Staff Report

INTRODUCTION OF AN ORDINANCE ADOPTING TIME LIMITS FOR COMPLETION OF CONSTRUCTION

Honorable Mayor and Council Members:

Summary

At the City Council meeting of September 25, 2007, staff received direction regarding an ordinance that would establish time limits for the completion of construction projects. This staff report presents a draft ordinance for introduction, which incorporates the direction received from the Council.

Background

Like most communities throughout the San Francisco Bay Area, Belmont has experienced a large number of construction projects over the last ten-plus years. While there are many positive ancillary benefits, construction activity is not without adverse effects. Construction projects inevitably bring noise, loss of on-street parking, unsightly job sites, stress on neighbors, wear and tear on roads and other infrastructure, and in the event a project is not completed in a timely manner, insufficient fees relative to the delivery of City services.

Currently, neither the California Building Code nor the Belmont Municipal Code provides a mechanism for setting a time limit completion of a construction project and obtaining a final inspection. Under current law, as long as measureable progress is made and inspections are performed every 180 days, a building permit remains valid. Consequently, a project could continue almost indefinitely. Indeed, there are building permits in Belmont that are over five years old.

In response to this issue, many communities including San Bruno, Burlingame, Hillsborough, Atherton, Belvedere, and Ross have adopted ordinances that establish a deadline for completion of construction projects based on the valuation of the project. In the event deadlines are not met and the job is not finished, daily fines are assessed.

Discussion

While the adverse effects of construction may be similar for all communities, demographics and social dynamics vary greatly between them. In other words, noise and unsightly construction sites are equally annoying to Belmont and Belvedere residents, but the underlying causes for protracted projects may be quite different. Lengthy Belvedere projects may be a result of esoteric or imported building products, while in Belmont, delays may be attributed to an owner-builder's learning curve or financial considerations. In recognition of this reality, Council directed staff to consider this when crafting the terms of this ordinance. To that end, the terms of this ordinance

are somewhat more generous, an extension can be granted, and fines are less onerous than in other municipalities.

Application

This ordinance will apply to all construction activities, including all additions, alterations, modifications, repairs, and improvements, which require a building permit. It will become effective thirty (30) days after adoption.

To date, there are over 280 construction projects with active building permits. The ages of these permits are as follows:

Age of Building Permit	Number of Projects
6 years	9
5 years	9
4 years	10
3 years	19
2 years	47
1 year or less	186 plus

In order to capture current projects that are ongoing beyond a reasonable time period, the ordinance will also apply to any building permit issued prior to January 1, 2002, which has not been completed as of the adoption of this ordinance. Depending on the construction valuation of these ongoing projects, the appropriate time limits will be imposed on them at the time of the effective date of the ordinance. This requirement would give the owners time to finish the projects, as if the projects were just starting.

Time Limits

As part of the building permit application, a reasonable valuation must be assigned to the project by the applicant and approved by the building official. Based on that valuation, a construction time limit is established in accordance with the table below. A typical kitchen or bathroom remodel falls within the first range of costs and completion is easily attainable for those types of projects in a nine month period. Additions and new homes would typically fall into the next two categories of cost and, again, under normal circumstances the time limits imposed are more than reasonable. Larger projects in excess of \$500,000.00 will have two years to complete and additional time can be granted in the event the scope of work requires more time.

Table of Time Limits

Estimated Value of Construction	Construction Time Limit (months)*
\$0 to \$50,000	9 months
\$50,001 to \$100,000	12 months
\$100,001 to \$500,000	18 months
Greater than \$500,000	24 months

* For landscaping work required by the Planning Commission, the applicant shall have an additional 90 days after the date of final inspection approval of the building permit by the Building Division for the main construction project.

The project is deemed complete upon the final performance of all construction work, including, but not necessarily limited to, exterior repairs and remodeling, total compliance with all conditions of application approval, and the clearing and cleaning of all construction-related materials and debris from the site. Final inspection and approval of the construction work by the City will mark the date of construction completion.

Penalties

Whereas citizens of some communities might budget for substantial penalties for failing to meet construction time limits, staff's experience with the Administrative Citation Programs tells us that here in Belmont, the smallest fine is taken seriously; it is anticipated that the specter of daily fines of a modest amount are sufficient motivation to complete a project in a timely manner. As such, the penalties stated in this ordinance are substantially less than in similar ordinances.

The penalty structure is as follows: upon failure of the applicant to complete construction by the established time limit, the Building Official shall issue a compliance order setting a date 30 days from the date of such order within which time the applicant shall be required to complete the construction, and advising the applicant that the following penalties shall be imposed if the applicant fails to comply with the said order:

Construction Completion Penalties

Period of time that projects remain incomplete beyond applicable time limits	Penalty
30 day grace period	\$0
31 st day through 60 th day	\$100 per day
61 st day through 120 th day	\$200 per day
121 st day & every day thereafter	\$300 per day

Extensions

For the majority of adopted ordinances, the issue of extensions is handled rigidly, with little opportunity to extend time limits beyond the established lengths. In this ordinance, and in acknowledgement of Belmont's sensibilities, more flexibility is allowed and extensions may be obtained by establishing that circumstances beyond the property owner's control delayed construction. Reasons that are not beyond the owner's control are: winter rainy season, stop work orders, design changes, custom or imported material, and supplier problems.

Reasons that are beyond the owner's control would include, but not be limited to: appeals of the project filed by third parties, delays required by the unforeseen discovery of archeological remains on the building site, labor stoppages, acts of war or terrorism, and natural disasters.

The property owner would seek an extension by making a request in writing to the building official 30 calendar days prior to the expiration of their building permit. The request would include circumstances beyond the control of the owner that precluded meeting the time limits as established by the ordinance. This is a one-time extension. The owner would be notified of the decision within 10 calendar days of filing the written request for an extension. An extension granted would include a compliance agreement with the building official on a new, mutually agreed upon construction deadline.

Appeals

Penalties imposed or an adverse decision on an extension request could be appealed by submitting a written request for an administrative hearing with the City Clerk no later than 10 calendar days from the date of service by mail of the notice of the penalty. The request would include any grounds which the property owner wishes the City to consider. The request would be accompanied by a deposit of the full amount of the penalties, if any, plus an appeal fee, as established by City Council.

Within 30 calendar days the appeal would be heard by a review committee consisting of the City's Building Official, Community Development Director, and the Public Works Director. The committee will consider any evidence provided by the property owner or his/her agents, in determination of the appeal.

After considering all testimony and evidence submitted at the hearing, the review committee would issue a written decision within 10 calendar days to affirm, modify or dismiss the construction completion penalties or the decision on the extension. The decision would include the committee's findings. The City shall issue the property owner a copy of the committee's written decision.

If the committee determines that the construction completion penalties or decision on the extension should be affirmed, any penalty amount on deposit with the City shall be retained by the City. Any penalty finally imposed pursuant to this Section shall constitute a lien on the applicant's property, to be imposed, recorded and satisfied. An aggrieved applicant may then file an action in court.

This approach of handling appeals is consistent with the methodology used in the City's Administrative Citation Program and in other municipal construction time limit ordinances (Hillsborough).

Public Outreach

In the thirty days preceding the effective date of the ordinance, staff will:

1. Contact all existing permit holders of the time limits
2. Provide handouts at the Permit Center counter apprising applicants of the ordinance
3. Create a notice on the City of Belmont web site
4. Issue a press release
5. Create a stamp that will note the deadline for completion on the plans
6. For larger projects, the deadline will be a topic of the preconstruction meeting
7. Create an "Acknowledgement of Deadline" notice to be signed by the owner

Fiscal Impact

The fiscal impact of adopting an ordinance limiting construction time periods will be staff's involvement in education and communication of the requirements of the ordinance, monitoring time periods, collection of fines, and preparation of staff reports for hearings. The fine revenue has the potential to offset these costs.

Public Contact

This matter was placed on the agenda and posted as required by the California Government Code.

Recommendation

Staff recommends that the Council discuss the draft ordinance prepared by staff, provide additional direction if necessary, and introduce the ordinance.

Alternatives

1. Direct staff to amend the proposed ordinance language.
2. Direct staff to take no additional action at this time.

Attachments

- A. Belmont Draft Ordinance
- B. Excerpt from the municipal code of the City of San Bruno for Time Limits for Completion of Construction
- C. Ordinance Adding Chapters 15.26 and 15.30 to the Hillsborough Municipal Code
- D. An Ordinance of the City of Belvedere Amending Sections 1.14.160 and 20.04.035 of the Belvedere Municipal Code Concerning Procedures for the Establishment, Imposition and Collection of Construction Time Limit Penalties
- E. Time Limits for Completion of Construction for the Town of Ross
- F. Ordinance establishing construction time limits for the Town of Atherton

Respectfully submitted,

Mark A. Nolfi
Building Official

Carlos de Melo
Community Development Director

Jack Crist
City Manager

Staff Contact:

Mark A. Nolfi, Building Official
(650) 595-7450
mnolfi@belmont.gov